# Water Commissioners and Water Measurement

Title 85-5
Montana Code Annotated

Philipsburg January 10, 2018

Mike Roberts, Hydrologist Department of Natural Resources and Conservation (DNRC)



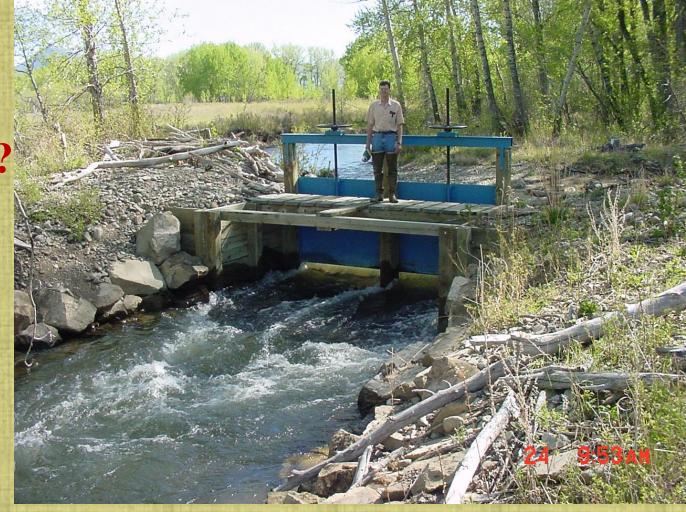




## Why are we talking about Water Commissioners?



What is a Water Commissioner?



An appointee of the District Court responsible for the measurement and delivery of water based upon the priority of water rights for a specific stream, ditch, reservoir, or other watercourse.

### Ditch Rider? Dam Tender? Water Commissioner? Mediator?

MCA 85-5-101 Applies to any stream, ditch, watercourse, spring, lake, reservoir, or other source of supply which has been determined by a decree of a court of competent jurisdiction (including temporary preliminary, preliminary, and final decrees).







## **How do Water Commissioners Enforce Decrees?**



**Distribute by Priority** 

Adjust Headgates

and

Record
Flow Rate
from
Measuring Devices

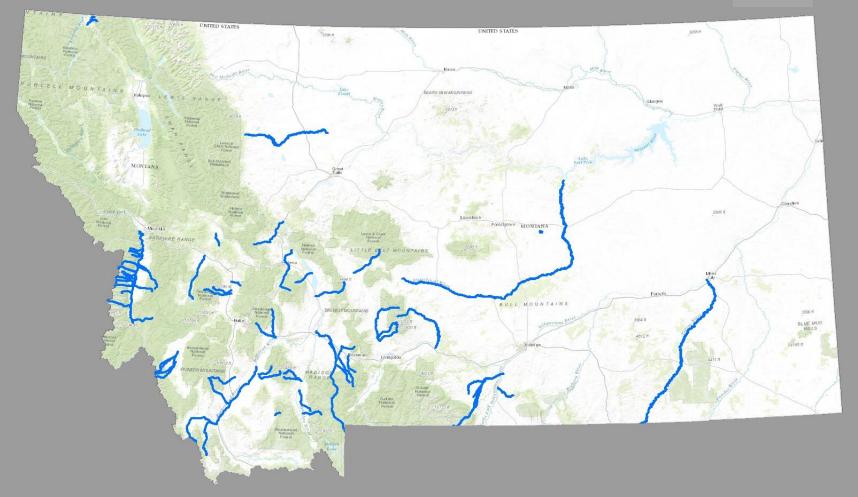


## Who are these guys?





## Sources With Active Water Commissioners



### What are DNRC's responsibilities to Water Commissioners?

TITLE 85. WATER USE

CHAPTER 5. WATER COMMISSIONERS AND WATER MEDIATORS

Part 1. Appointment and Duties

MCA 85-5-111

#### Water Commissioner And Mediator Education

**85-5-111.** Water commissioner and mediator education. (1) The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water courts, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

- (a) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;
- (b) preparation and, as necessary, revision of a water commissioner and mediator manual; and
- (c) an outreach program that identifies persons who might serve as water commissioners or mediators.
- (2) Unless a district court judge having jurisdiction determines otherwise, a water commissioner appointed pursuant to 85-5-101 shall complete at least one educational program as provided in subsection (1) prior to administering water.

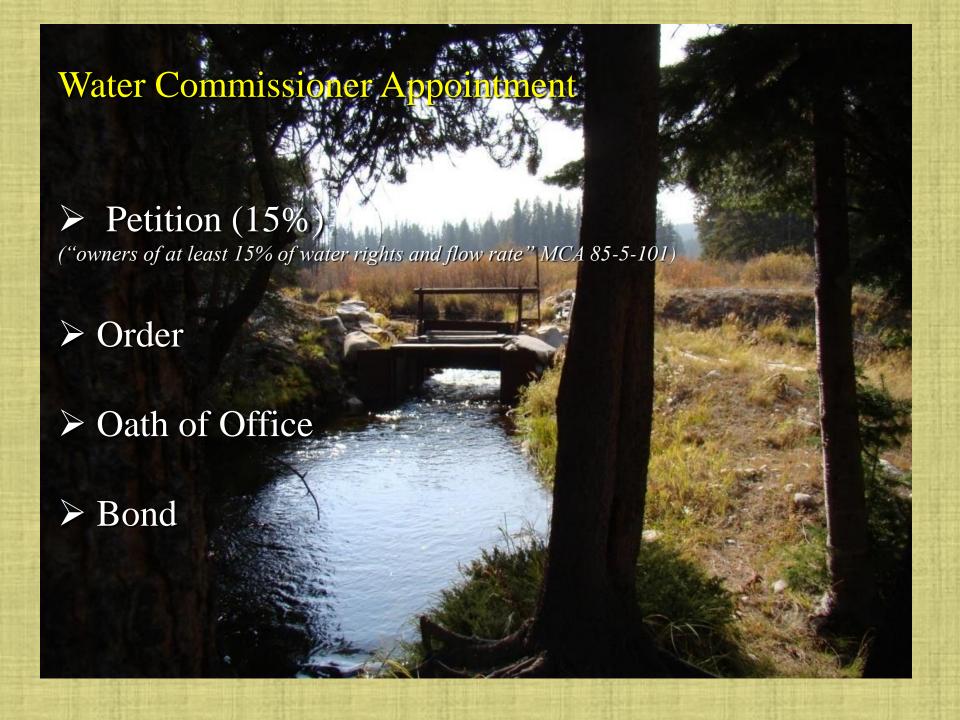
History: En. Sec. 2, Ch. 625, L. 1989; amd. Sec. 1, Ch. 118, L. 2017.

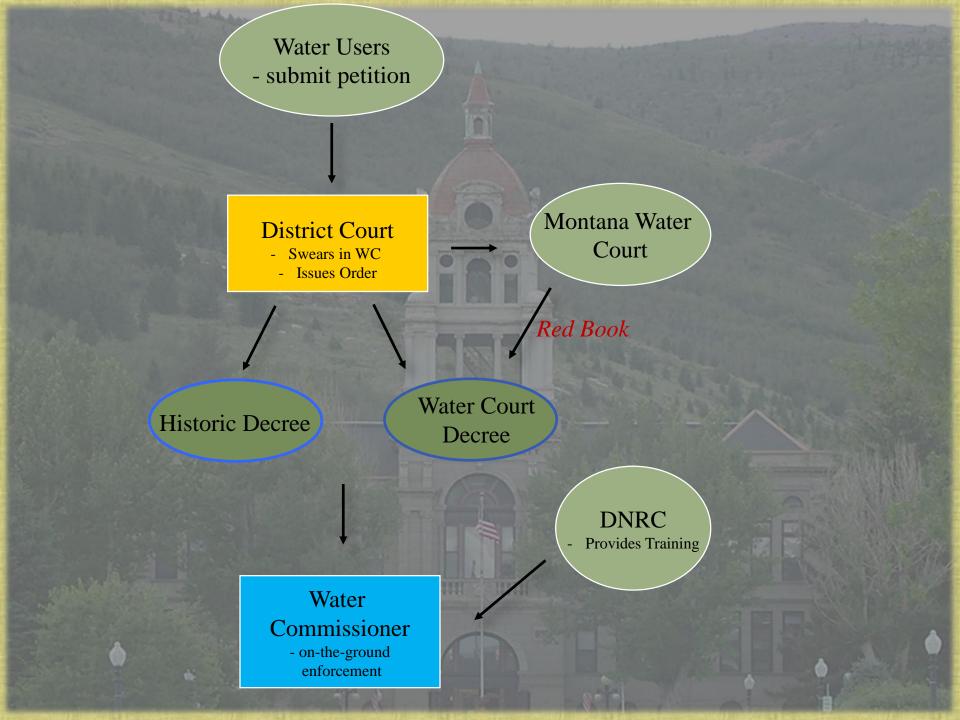
## To provide training for Water Commissioners







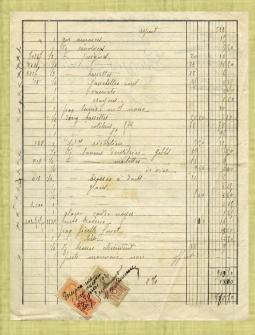




## **District Court Decree**

(historical decrees)

- Typically includes all water rights dated before Decree Issued
- Does not reflect newer water rights, permits, or changes
- Does not include ownership changes



#### **Water Court Decree** VS.

Typically includes all water rights, permits, changes in appropriation, and is updated annually.

nforceable					Pod				Twp			Diversion			To
riority Date	Water Right #	Owner	Type	Use Acres	ID	Means	Qtr Sec .	Section	m Rge	Source	Enf#	Name	From - To	Cfs	Fl
8800601	43A W 11572 00	PORCUPINE CREEK RANCH INC	USE	ST	1	LS	N2SW	34	5N9E	SHIELDS RIVER	LS010	LS010	01 01 12 31		0
8830415	43A W 137659 00	MONTANA, STATE OF BOARD OF LAND COMMISSIONERS	USE	ST	1	DT	NWSENE	25	5N9E	SHIELDS RIVER	018	BECKER DITCH	01 01 12 31		0
8830425	43A W 193075 00	BRIGHT, GORDON L	DECR	IR 30.8	1	HG	SENWSW	9	4N9E	SHIELDS RIVER	012	BIG CANAL	05 01 10 04	0.43	
8830425		BRIGHT, JACQUELINE J	DECR	IR 30.8	1	HG	SENWSW	9	4N9E	SHIELDS RIVER	012	BIG CANAL	05 01 10 04		0
8830425	43A W 31162 00	ADAMS, DIRK S	DECR	IR 104	1*	HG		4	4N9E	SHIELDS RIVER	012	BIG CANAL	05 15 10 19	3.33	
8830425		ADAMS, DIRK S	DECR	IR 104	2*	HG	NWNWNW	3	4N9E	SHIELDS RIVER	014P	ADAMS PUMP SITE	05 15 10 19		
8830425	43A W 33140 00	ADAMS, DIRK S	DECR	ST	1	LS	SESW	16	4N9E	SHIELDS RIVER	LS006	LS006	01 01 12 31		
3830610	43A W 113381 00	ADAMS, ANITA L	DECR	IR 212	1*	HG	SWSWSE	4	4N9E	SHIELDS RIVER	011	UPPER SWANDAL DITCH	04 15 10 31	1.69	
8830610		ADAMS, ANITA L	DECR	IR 212	2*	HG	SESENW	9	4N9E	SHIELDS RIVER	010	MIDDLE SWANDAL DITCH	04 15 10 31		
8830610		ADAMS, ANITA L	DECR	IR 212	3*	HG	SENWSE	9	4N9E	SHIELDS RIVER	009	LOWER SWANDAL DITCH	04 15 10 31		
8830610		ADAMS, DIRK S	DECR	IR 212	1*	HG	SWSWSE	4	4N9E	SHIELDS RIVER	011	UPPER SWANDAL DITCH	04 15 10 31		
8830610		ADAMS, DIRK S	DECR	IR 212	2*	HG	SESENW	9	4N9E	SHIELDS RIVER	010	MIDDLE SWANDAL DITCH	04 15 10 31		
8830610		ADAMS, DIRK S	DECR	IR 212	3*	HG	SENWSE	9	4N9E	SHIELDS RIVER	009	LOWER SWANDAL DITCH	04 15 10 31		
830610	43A W 11582 00	PORCUPINE CREEK RANCH INC	DECR	IR 425	1	HG	NWSENE	25	5N9E	SHIELDS RIVER	018	BECKER DITCH	05 15 09 19	0.56	
830610	43A W 191857 00	ADAMS, ANITA L	USE	ST	11	DT	SWSWSE	4	4N9E	SHIELDS RIVER	011	UPPER SWANDAL DITCH	01 01 12 31		
830610		ADAMS, ANITA L	USE	ST	2*	DT	SESENW	9	4N9E	SHIELDS RIVER	010	MIDDLE SWANDAL DITCH	01 01 12 31		
830610		ADAMS, ANITA L	USE	ST	3*	DT	SENWSE	9	4N9E	SHIELDS RIVER	009	LOWER SWANDAL DITCH	01 01 12 31		

## Newly Appointed Water Commissioner

now what??









## Once Appointed -- Initial Responsibilities

Water Commissioner

District Court

Water Users

DNRC

Contact Clerk of Court

Worker's Comp

Get map, list of users

Contact all water users

Inspect infrastructure

Record Keeping

Oath, Bond, Order

Copy of Decree

List of Water Users

Billing

Allow Access

Functioning Infrastructure

Pay Bill

Training

Follow-up Training

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Functioning Infrastructure

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## What is the District Court's Responsibility to Water Commissioners

## District Judge



- 1) Appoint Commissioner (MCA 85-5-101)
- 2) Issue Order setting terms of appointment (salary, term of office, recording schedule, other authorities) (MCA 85-5-101 to 108)
- 3) Address Dissatisfied Water User complaint (MCA 85-5-301)

## What is the District Court's Responsibility to Water Commissioners



### **Clerk of Court**

1) Oath and Bond

(MCA 85-5-103)



- 2) File Water Commissioner's daily record of water distributed (MCA 85-5-107)
- 3) Notify each water user of Water Commissioner bill (MCA 85-5-204)
- 4) Other: Copy of Decree, List of Water Users (not statutory)

## Why is filing Water Commissioner records important?

1) It's the Law

2) Provides accountability/transparency of water commissioner.

3) Provides a public record of water distribution for water user's, general public, government agencies, etc.

4) May preclude a Dissatisfied Water User's complaint

5) It's how the WC gets paid.

## **\$\$\$ Payment**

- > Proportionate (mileage, training, worker's comp, ect)
- > May receive up to 80% money up front.
- ➤ Water Commissioner is paid directly through Clerk of Courts office
- ➤ If user does not pay, water can be shut off (MCA 85-5-206)





## Daily Record of Water Distribution

Daily allotment (inches)

Payment (wage and mileage)

MONTANA FIFTH JUDICIAL DISTRICT COURT, BEAVERHEAD COUNTY REPORT OF WATER COMMISSIONER DATE MILES CAN OUT INUSUROLY CONJULTATIONS 336 484 336 484 199 25 185 185 185 0 Atsix 220 180 180 TOTAL Commissioner expenses: Workers Compensation insurance, payment made during current month......\$ SUBMITTED this 28 day of TULY, 2006

DAYS 2157ED WITH Water Commissioner

WILE AGO DAG FILE WOCKED

July 2017

#### Water Commissioner Daily Reporing & Expenses

Judicial District #: Enter #
County: Enter County
Clerk of Court: Enter Court

Water Commissioner: Enter Commissioner Name

Water Body: Enter Water Body Name

	Vater User	Smith, Jerry	Smith, Doug	Big Ranch	Smith, Jerry	Villiams, Eric	Ellis, Braeden	А	В	С	D	E	F	G	н
	Ditch	Big	Middle	Small	Pasture	Farm1	Farm2	×	x	×	x	×	x	×	x
	+	+	+	+	1	1	+								
DATE	MILES	Inches	Inches	Inches	Inches	Inches	Inches	Inches	Inches	Inches	Inches	Inches	Inches	Inches	Inches
7/1		400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/2	100	400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/3	100	400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/4		400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/5		400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/6	50	400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/7	50	400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/8		400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/9		400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/10	75	400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/11	75	400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/12		400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/13		400	100	150	80	80	160	0	0	0	0	0	0	0	0
7/14	100	400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/15	100	400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/16		400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/17		400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/18	50	400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/19	50	400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/20		400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/21		400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/22	75	400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/23	75	400	100	150	40	60	100	0	0	0	0	0	0	0	0
7/24		400	100	150	40	0	0	0	0	0	0	0	0	0	0
7/25		400	100	150	40	0	0	0	0	0	0	0	0	0	0
7/26	100	400	100	150	40	0	0	0	0	0	0	0	0	0	0
7/27	100	400	100	150	40	0	0	0	0	0	0	0	0	0	0
7/28		400	100	150	40	0	0	0	0	0	0	0	0	0	0
7/29		400	100	150	40	0	0	0	0	0	0	0	0	0	0
7/30		400	100	150	40	0	0	0	0	0	0	0	0	0	0
7/31	:	400	100	150	40	0	0	0	0	0	0	0	0	0	0
TOTAL	1100	12400	3100	4650	1760	1640	3080	0	0	0	0	0	0	0	0

#### **Water Commissioner Expenses**

Daily Wage:	\$100	per day	14	days	S	\$1,400
Mileage:	\$0.50	per mile	1100	miles	5	550
₩orkers Comp:	200	per month			5	200
Other Expenses (list):	3		phone, log books	8	5	100

Total Commissioner Expenses for the month

S 2

Form

FIELD FORMS

JULY EXAMPLE

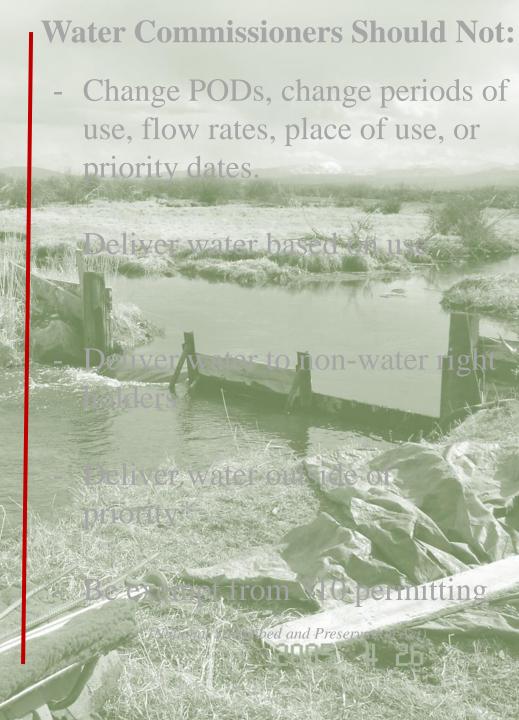
BILLING SUMMARY

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1 1

### **Water Commissioners Should:**

- Measure and Distribute water based on priority and decree.
- Inspect Headgates and Measuring devices.
- Record daily distribution.
- Shut water off based on:
  - > priority
  - > lack of payment
  - > non-cooperation regarding infrastructure
- Lock headgates if it is being tampered with (site-specific)



### **Water Commissioners Should:**

- Measure and Distribute water based on priority and decree.
  - Inspect Headgates and Measuring devices
  - Record dark
    - Shull was f based
      - n de la protection
      - infrasi leture
      - ck headgates if kisk ered with (site-specif

### Water Commissioners Should Not:

- Change PODs, change periods of use, flow rates, place of use, or priority dates.
- Deliver water based on use

- Deliver water to non-water right holders
- Deliver water outside of priority\*
- Be exempt from 310 permitting

(National Streambed and Preservation Act)





## **Interference With Actions of a Commissioner**

MCA 85-5-406. A person opening or closing a headgate after being set by the commissioner or who in any manner interferes with the commissioner in the discharge of the commissioner's duties is guilty of contempt of court and may be proceeded against for contempt of court as provided in contempt cases.

## **Encourage Communication**

Water User and Water Commissioner Water Commissioner and District Court



Issues that require Communication include:

- ➤ New WC Introduction
- > Turning on/off
- > Headgate Adjustment
- > Access
- > Repair/Replacement
- > Payment Issues

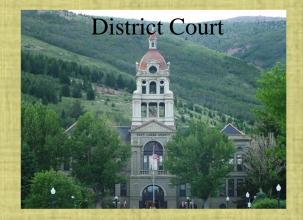


## **Rights and Duties of Water Users:**

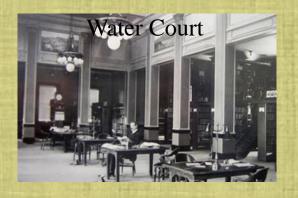
- Required to have and pay for suitable and functioning headgate and measuring device.
- > Required to pay for water delivered.
- > Required to allow access to PODs.
- > May file dissatisfied user complaint with judge.
- ➤ Failure of Water Commissioner to perform duty is Contempt of Court.











Requires Patience of both Water Commissioner and Water User

## Water Commissioner Training

Title 85-5
Montana Code Annotated

Helena, Montana April 4-5, 2018

Department of Natural Resources and Conservation (DNRC)



Training is FREE

#### http://dnrc.mt.gov/divisions/water/management/training-education/water-commissioner-information



DNRC Headquarters 1539 Eleventh Ave. Helena, MT 59601 Phone: (406) 444-2074 | Fax: (406) 444-2684 Questions? Email us

Divisions Grants and Loans Licenses and Permits Public Information Land Board Flood and Fire Contact DNRC

#### Water Adjudication

#### Water Management

State Water Plan

Regional River Basin Information

Programs, Projects, and Studies

Reports & Technical Information

Training & Education

#### Water Commissioner Information

Transboundary Water Information

Water Compact Information

St. Mary Rehabilitation Project

Water Operations

Water Projects

Water Rights Bureau

**Drought Management** 

#### Water Commissioner Information

DNRC has developed an educational program for water commissioners that provides annual training on commissioner responsibilities and water measurement techniques. This free training is available to anyone interested in the accurate measurement and distribution of water in Montana including state and federal water managers, water commissioners, ditch riders and dam tenders, District Court and Water Court personnel.

#### Training Materials



Streamflow and Water Right Data



District Court Information



Decree Status



Forecasting



Water Commissioner Law



#### FAQs



Active Water Commissioners



Glossary



#### **Educational Materials**

#### Water Rights and Historical Beneficial Use

- · Water Rights and Historical Beneficial
- · Water Rights and Historical Beneficial Use (Video)

#### Facts About Montana's Water

- 1. Who Owns the Water in Montana?
- 2. Who Manages Montana's Water?
- 3. How Much Water is There and How is it Used?
- 4. Can Groundwater Meet the Demand for New Water Uses in Montana?
- 5. What is the History of Water Planning
- in Montana? 6. How is Water Managed in the Event of Water Shortages?
- 7. What is Water Rights Adjudication?
- 8. How Are Instream Flows Protected?
- 9. What Are Federal Reserved Water
- 10. Water Fact Sheets Terminology

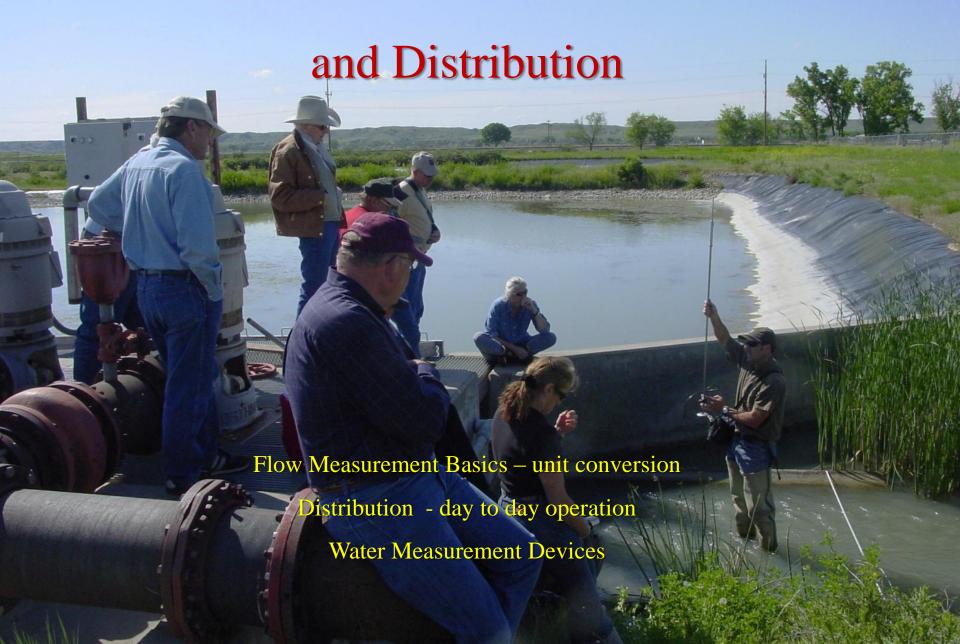
#### Guide to Montana Water Management

Who Does What with Montana's Water Resources?





## Water Measurement



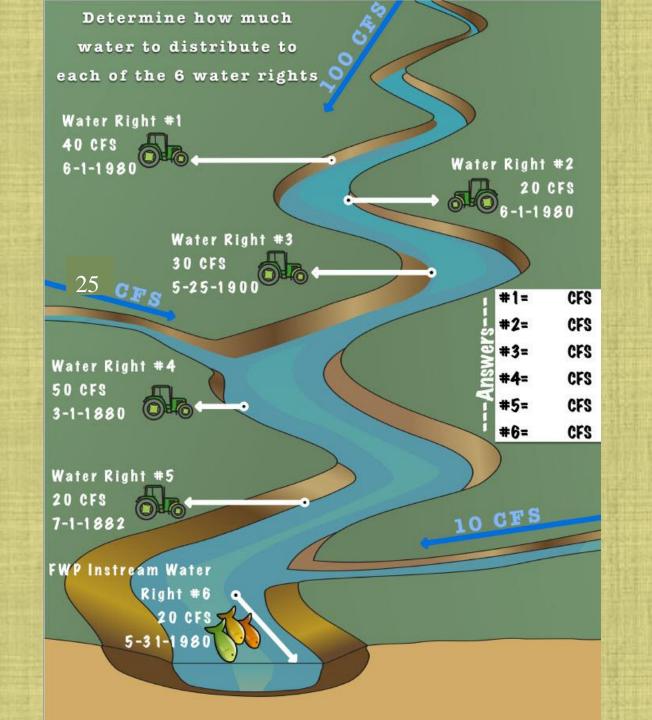
## Water Distribution

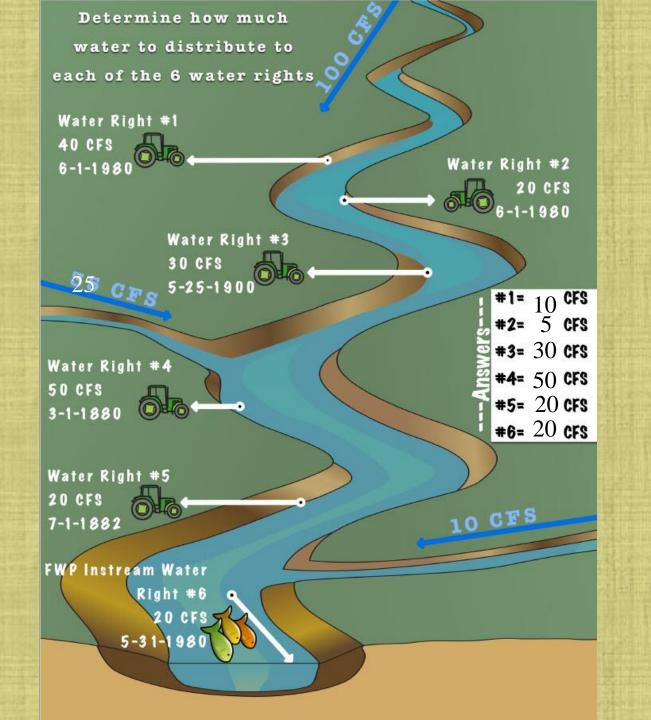
- Priority and Instream Flow
- Decreed vs. Stored Waters
- Understanding hydrology of system

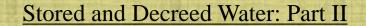












Little Creek has three water right contracts from Fish Reservoir as well as two decreed water rights directly from the stream. The Fish Lake Irrigation District relies solely on the 20 cfs of stored water released from the dam. The channel loses 1 cfs/mile to seepage below the reservoir. If evaporation and seepage in the reservoir are negligible, determine the amount of water at each location.

A =

B =

C =

D =

E =

F =

Fish Reservoir Irrigation District (contract water – priority date 1940 – equal shares)

lined canal
C D E

Decreed Diversion F = 10 cfs (1910)

(distance = 2 miles)

distance = 1 mile

15 cfs (inflow)

Decreed

Diversion A

(1896)

WR = 5 cfs

Fish Lake

(1940)

Big River

35

cfs (outflow)

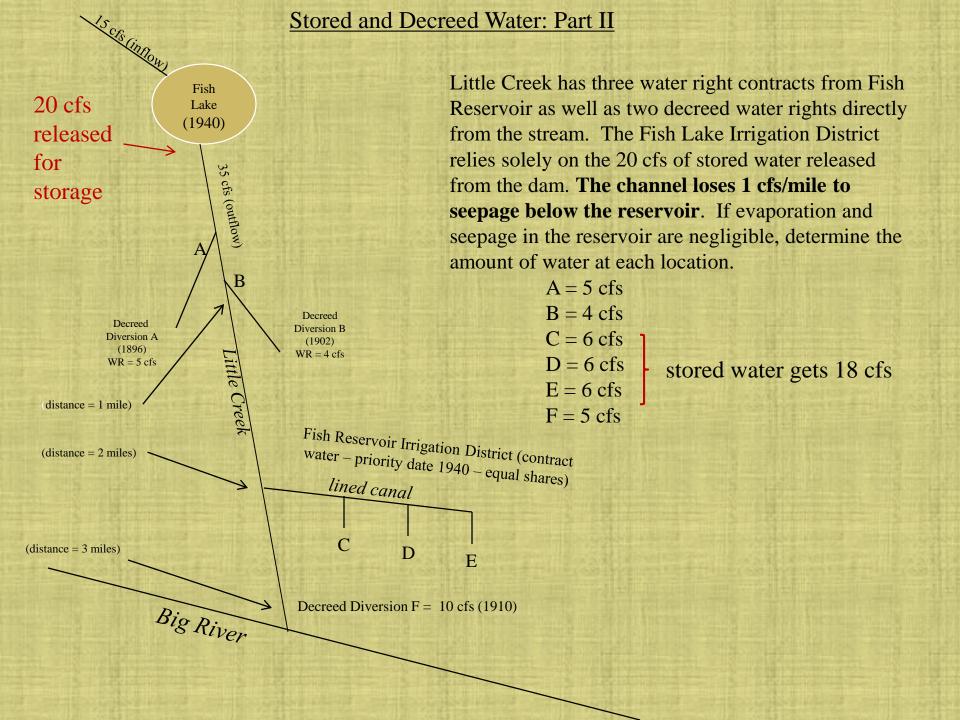
Decreed

Diversion B

(1902)

WR = 4 cfs

(distance = 3 miles)



# Flow Measurement Basics

 Flow Rate or discharge is the volume of water passing a flow section per unit time

Standard units of cubic feet per second (cfs)

1 cfs is equivalent to:

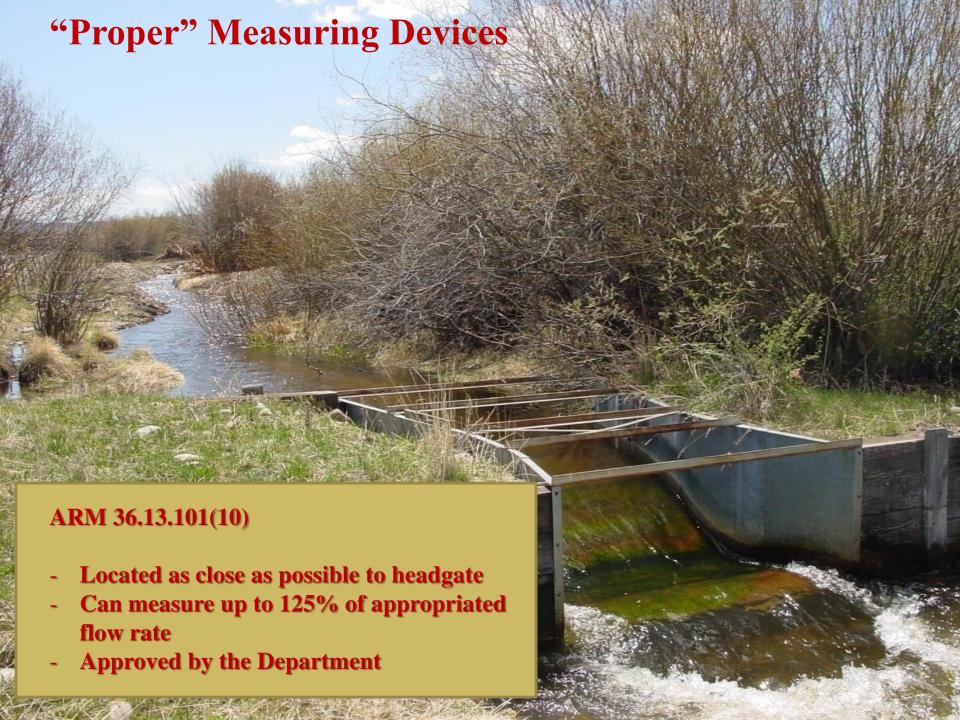


40 miner's inches in Montana 448.8 gallons per minute (gpm) 1.98 ac-ft per day

### MCA 85-5-302



....All persons using water from any stream or ditch whereon a water commissioner is appointed are required to have <u>suitable</u> headgates at the point where the ditch taps a stream and shall also, at some <u>suitable</u> place on the ditch and as near the headgate as practicable, place and maintain a <u>proper</u> measuring box, weir, or other appliance for the measurement of the waters flowing in the ditch.

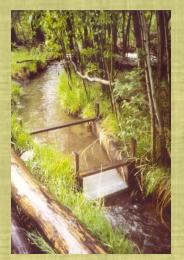


## Identifying Flume or Weir Size

Parshall, Montana, and Cutthroat flume size delineations are based on throat widths. Ramp flume sizes are based on maximum flow capacity.



2' cutthroat flume



2' Montana flume



4 cfs ramp flume

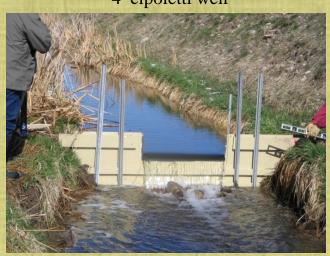


12' parshall flume

Rectangular and Cipoletti Weir sizes are delineated based on notch width. V-notch weirs are all the same and therefore have no specific size delineation.



4' cipoletti weir



3' rectangular weir

## (1) Determine size and type of Flume or weir. Ex. 2-ft. Parshall Flume



(2) Determine if device is properly functioning. Check for free flow and level (lengthwise and crosswise).



(3) Take staff gage reading. In this example, stage = 1.0



(4) Using staff gage reading, look up discharge in appropriate table. Match the stage reading to the appropriate flume or weir size (based on throat or notch width). In this example, Q = 8.0 cfs.

Reading Flumes and Weirs

**Table A8-12 [continued].** Free-flow discharges in  $\rm ft^3/sec$  through 1- to 8-foot Parshall flumes. Discharges for 2- to 8-ft flumes computed from the formula  $Q = 4.00Wh_a^{1.522(W^0.026)}$ . Discharges for 1-ft flume computed from the formula  $Q = 3.95h_a^{1.55}$ .

Upper Head	Discharge for flurnes of various throat widths, W							
h <sub>a</sub> , ft	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0
1.00	3.95	8.00	12.0	16.0	20.0	24.0	28.0	32.0
1.01	4.01	8.12	12.2	16.3	20.3	24.4	28.4	32.5
1.02	4.07	8.25	12.4	16.5	20.6	24.8	28.9	33.0
1.03	4.14	8.37	12.6	16.8	21.0	25.2	29.4	33.6
1.04	4.20	8.50	12.8	17.0	21.3	25.5	29.8	34.1
1.05	4.26	8.63	13.0	17.3	21.6	25.9	30.3	34.6
1.06	4.32	8.76	13.1	17.5	21.9	26.3	30.7	35.1
1.07	4.39	8.88	13.3	17.8	22.3	26.7	31.2	35.7
1.08	4.45	9.01	13.5	18.1	22.6	27.1	31.7	36.2
1.09	4.51	9.14	13.7	18.3	22.9	27.5	32.1	36.8
1.10	4.58	9.27	13.9	18.6	23.3	27.9	32.6	37.3
1.11	4.64	9.40	14.1	18.9	23.6	28.3	33.1	37.8
1.12	4.71	9.54	14.3	19.1	23.9	28.8	33.6	38.4
1.13	4.77	9.67	14.5	19.4	24.3	29.2	34.1	38.9
1.14	4.84	9.80	14.7	19.7	24.6	29.6	34.5	39.5
1.15	4.91	9.93	14.9	19.9	25.0	30.0	35.0	40.1
1.16	4.97	10.1	15.1	20.2	25.3	30.4	35.5	40.6
1.17	5.04	10.2	15.3	20.5	25.7	30.8	36.0	41.2
1.18	5.11	10.3	15.6	20.8	26.0	31.2	36.5	41.7
1.19	5.17	10.5	15.8	21.1	26.4	31.7	37.0	42.3
1.20	5.24	10.6	16.0	21.3	26.7	32.1	37.5	42.9
1.21	5.31	10.7	16.2	21.6	27.1	32.5	38.0	43.5
1.22	5.38	10.9	16.4	21.9	27.4	33.0	38.5	44.0
1.23	5.44	11.0	16.6	22.2	27.8	33.4	39.0	44.6
1.24	5.51	11.2	16.8	22.5	28.1	33.8	39.5	45.2
1.25	5.58	11.3	17.0	22.8	28.5	34.3	40.0	45.8
1.26	5.65	11.4	17.2	23.0	28.9	34.7	40.5	46.4
1.27	5.72	11.6	17.4	23.3	29.2	35.1	41.1	47.0
1.28	5.79	11.7	17.7	23.6	29.6	35.6	41.6	47.6
1.29	5.86	11.9	17.9	23,9	30.0	36.0	42.1	48.2
1.30	5.93	12.0	18.1	24.2	30.3	36.5	42.6	48.8
1.31	6.00	12.2	18.3	24.5	30.7	36.9	43.1	49.4
1.32	6.07	12.3	18.5	24.8	31.1	37.4	43.7	50.0
1.33	6.15	12.4	18.8	25.1	31.4	37.8	44.2	50.6
1.34	6.22	12.6	19.0	25.4	31.8	38.3	44.7	51.2
1.35	6.29	12.7	19.2	25.7	32.2	38.7	45.3	51.8
1.36	6.36	12.9	19.4	26.0	32.6	39.2	45.8	52.4
1.37	6.43	13.0	19.6	26.3	33.0	39.6	46.3	53.1
1.38	6.51	13.2	19.9	26,6	33.3	40.1	46.9	53.7
1.39	6.58	13.3	20.1	26.9	33.7	40.6	47.4	54.3

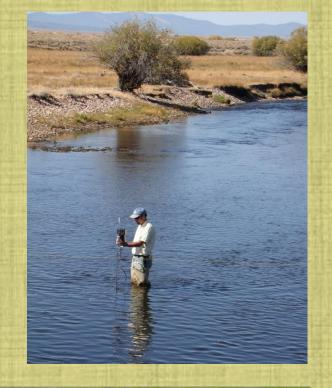
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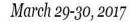




# Department of Natural Resources & Conservation Water Resources Division

#### Water Commissioner Training Certificate of Attendance

awarded to



In recognition of your attendance and participation in the 2017 Water Commissioner

Training held in Helena, Montana pursuant to \$85-5-111, MCA.



**Jan Langel**Division Administrator

Mike Roberts Hydrologist - Trainer



March 15 Dillon (specialty training)

April 4-5 Helena

Mid-April Hamilton

Mid-June Helena

# Questions??

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